

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

IN RE: DONNIE RAY DUNN
Debtor(s),

CASE No: 14-60015-RBC
Chapter 13

U.S. BANK, N.A., SUCCESSOR TRUSTEE TO
LASALLE BANK NATIONAL ASSOCIATION,
ON BEHALF OF THE HOLDERS OF BEAR
STEARNS ASSET BACKED SECURITIES I
TRUST 2006-HE2, ASSET-BACKED
CERTIFICATES SERIES 2006-HE2

Movant,

v.

DONNIE RAY DUNN
HEBERT BESKIN, Trustee,
Respondents.

NOTICE OF MOTION AND HEARING

The Movant above has filed a Motion for Relief from Stay and Imposition of 365 Day Bar on Bankruptcy filings affecting certain real property.

PLEASE TAKE NOTICE that a hearing on the foregoing Motion will be held on March 17, 2014 at 9:30 a.m. in Charlottesville, Room 200, US Courthouse, 255 W. Main Street, Charlottesville, VA 22902.

If you do not want the Court to grant the relief requested in the motion, then, pursuant to Local Rule 9013-1, you must file a response on or before March 10, 2014. Absent a timely filed response, a proposed order will be tendered to the Court granting the relief requested in the motion and Court may treat the motion as conceded and enter the proposed order without the necessity of holding a hearing.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have on in this bankruptcy case. If you do not have an attorney, you may wish to consult one.)

Dated: February 6, 2014

Respectfully Submitted,
/s/ Angela N. Watson
Angela Watson, Esq.
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22375 Broderick Drive, Suite 260
Dulles, Virginia 20166

**UNITED STATES BANKRUPTCY COURT
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IN RE: DONNIE RAY DUNN
Debtor(s),

CASE No: 14-60015-RBC

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U.S. BANK, N.A., SUCCESSOR TRUSTEE TO
LASALLE BANK NATIONAL ASSOCIATION, ON
BEHALF OF THE HOLDERS OF BEAR STEARNS
ASSET BACKED SECURITIES I TRUST 2006-
HE2, ASSET-BACKED CERTIFICATES SERIES
2006-HE2

Movant,

v.

DONNIE RAY DUNN
HEBERT BESKIN, Trustee,
Respondents.

**MOTION FOR IN-REM RELIEF FROM STAY AND
IMPOSITION OF A ONE YEAR BAR OF FILINGS AFFECTING REAL PROPERTY**

COMES NOW your Movant, U.S. Bank, N.A., successor trustee to LaSalle Bank National Association, on behalf of the holders of Bear Stearns Asset Backed Securities I Trust 2006-HE2, Asset-Backed Certificates Series 2006-HE2, as serviced by Select Portfolio Servicing, Inc. ("Movant"), by counsel, and files this Motion for Relief from Stay to terminate, annul, modify or condition the automatic stay pursuant to 11 U.S.C. 362(d) and imposition of a 365 day bar on bankruptcy filings affecting real property and other relief, and in support thereof states the following:

1. This Court has proper jurisdiction over the matters herein alleged pursuant to 28 U.S.C. §1334. This matter constitutes a core proceeding within the meaning of 28 U.S.C. §157 and a contested matter under Rules of Bankruptcy procedure 4001 and 9014.
2. On January 6, 2014, the debtor filed a petition under Chapter 13 of the United States

Filed by:
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Counsel for Movant File No.: VA-96000080-14

Bankruptcy Code.

3. Prior to the instant filing, the Debtors have filed previous bankruptcies involving the real property used as security for Movant's claim. The previous bankruptcies are as follows:

- a. Debtor filed a petition under Chapter 13 of the Code on January 19, 2011, Case No. 11-60133-WEA, Western District of Virginia, Lynchburg Division. Less than one month later, on February 4, 2011, the case was dismissed due to the debtor's failure to comply with Court Orders regarding the filing of the required schedules, bankruptcy assistance and the filing fee.
- b. Debtor filed a petition under Chapter 13 of the Code on November 23, 2010, Case No. 10-63348-WEA, Western District of Virginia, Lynchburg Division. Less than one month later, on December 9, 2010, the case was dismissed due to the debtor's failure to comply with Court Orders regarding the filing of required schedules, bankruptcy assistance and credit counseling.
- c. Debtor filed a petition under Chapter 11 of the Code on November 28, 2007, Case No. 07-62118-WEA, Western District of Virginia, Lynchburg Division. Movant filed a Motion for Relief from Stay on June 11, 2008 (ECF No. 84), which was settled with an agreed order entered on September 3, 2008 (ECF No. 141). On May 26, 2009, the Debtor, by counsel, moved to voluntarily dismiss the case because reorganization was not possible (ECF No. 157). The motion to dismiss was granted on September 24, 2009 (ECF No. 170).

4. Movant is a secured creditor of the debtor by virtue of the fact that it holds or services an Adjustable Rate Note dated September 22, 2005 in the original principal amount of \$280,500.00.

5. Said Note is secured by Deed of Trust, of even date, on property owned by the debtors located at 6500 Free Union Rd, Free Union, VA 22940 (the "Property"), more specifically described as:

ALL THAT CERTAIN TRACT OR PARCEL OF LAND WITH IMPROVEMENTS THEREON AND APPURTENANCES THEREUNTO BELONGING, LYING ON STATE ROUTE 601 IN THE WHITE HALL MAGISTERIAL DISTRICT OF ALBEMARLE COUNTY, VIRGINIA, BEING MORE PARTICULARLY DESCRIBED AS PARCEL D, CONTAINING 5.10 ACRES ON PLAT OF J. THOMAS GALE, LAND SURVEYOR, BEARING DATE DECEMBER 20, 1990, OF RECORD IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF SAID COUNTY IN DEED BOOK 1134, PAGE 79.

SUBJECT TO APPLICABLE EASEMENTS, RESTRICTIONS, COVENANTS AND CONDITIONS CONTAINED IN DULY RECORDED DEEDS, PLATS AND OTHER INSTRUMENTS CONSTITUTING CONSTRUCTIVE NOTICE IN THE CHAIN OF TITLE WHICH HAVE NOT EXPIRED BY TIME LIMITATION CONTAINED THEREIN OR OTHERWISE BECOME INEFFECTIVE.

ADDRESS: 6500 FREE UNION RD; FREE UNION, VA 229401811
TAX MAP OR PARCEL ID NO.: 00700-038CO.

6. Debtor has failed to make all post-petition payments and has failed to make payments on the note and as of the date of filing is contractually due for the June 1, 2008 payment and all payments thereafter.

- a. June 1, 2008 – October 1, 2008 at a rate of \$2,702.84 per month,
- b. November 1, 2008 – April 1, 2009 at rate of \$2,751.97 per month,
- c. May 1, 2009 – October 1, 2009 at a rate of \$2,559.13 per month,
- d. November 1, 2009 – April 1, 2010 at rate of \$2,373.83 per month,
- e. May 1, 2010 – October 1, 2011 at rate of \$2,262.45 per month,
- f. November 1, 2011 – April 1, 2012 at rate of \$2,262.46 per month,
- g. May 1, 2012 at a rate of \$2,304.48 per month,
- h. June 1, 2012 – October 1, 2012 at a rate of \$2,702.48 per month,
- i. November 1, 2012 – March 1, 2013 at a rate of \$2,304.48 per month,
- j. April 1, 2013 at a rate of \$2,223.55 per month,
- k. May 1, 2013 – October 1, 2013 at a rate of \$2,182.68 per month,
- l. November 1, 2013 through the present at a rate of \$2,185.37 per month.
- m. plus the costs and expenses of the current proceeding. However, the Debtor is contractually due for the July 1, 2009 payment.

7. Movant anticipates filing a proof of claim, before the established bar date. Such claim will include approximately \$273,952.07 in outstanding principal balance, a total claim of

approximately \$423,540.43 and evidence pre-petition arrears of approximately \$173,935.91 inclusive of the 68 missed pre-petition payments detailed above. The Court can consider this pleading as an informal proof of claim for the purposes of noticing Debtor and Creditors of the extent and amount of Movant's claim.

8. There is no equity in the Property for the benefit of the Debtor or Debtor's estate when costs of sale and tax consequences are included, to-wit:

- a. The tax assessed value of the real property is \$224,800 according to the Ablemarle County, Virginia Tax Assessor's Office.
- b. The payoff for Movant's Note is approximately \$424,889.15, excluding the costs of the current proceeding.

9. The arrearages aforementioned are increasing on a daily basis, to the detriment of Movant's interests.

10. The failure to make payments is a material default, and constitutes cause for relief from stay.

11. Movant has not been offered adequate protection for its interests, nor is Debtor presently able to provide adequate protection to the Movant.

12. The Proeprty is not necessary for an effective reorganization and the amount of pre-petition debt owed to Movant in relation to the Property calls into question any attempted reorganization.

13. Movant is being injured by its inability to proceed against the Property securing the indebtedness due to the automatic stay provided for in 11 U.S.C. §362.

14. Cause also exists for imposing an in-rem relief on the Property because the history of the filings by the Debtors demonstrate clearly their intention to abuse the bankruptcy

process in order to hinder and delay the Movant's efforts to foreclose on its Deed of Trust, rather than any good faith attempt to reorganize pre-petition debt. Indeed, Creditor is unable due to the debtor's lack of schedules or plan to see if there is any good faith way for the Debtor to reorganize the debt owed to Movant.

15. If debtor's plan was to surrender the Property to Movant in any future filed plan, then there will be little to no harm in granting Creditor relief from stay and the in-rem relief as to the Property for the period of three hundred sixty five days.

16. Movant adopts the arguments contained in the U.S. Trustee's Motion for Sanctions filed on January 23, 2014 (ECF No. 16) and incorporates those arguments herein by reference.

WHEREFORE, these premises considered, Movant moves this honorable Court to:

- a) Enter an order granting this Motion;
- b) That this Court order the stay under 362(a) terminated;
- c) That such order grants Movant relief from the automatic stay to exercise its legal rights under applicable state law as to the Property and Deed of Trust;

- d) That such order invoke Section 362(d)(4) for recording in compliance with applicable Virginia state law governing notices of interests or liens in real property, such that the Court's order will be binding in any other case under the Bankruptcy Code purporting to affect the Property and that such order shall apply to the earliest of:

- 1) A successful foreclosure sale by Movant, including all action to regain possession of the Property,
- 2) Payment in full of the debt owed to movant, or
- 3) Three Hundred Sixty Five (365) days from the date the order is entered.

- e) That such order is able to be recorded in the land records where the Property is located,
- f) That such order grant reasonable attorney's fees and costs to Movant as permitted under the Note, Mortgage and applicable law in the prosecution of the Motion;
- g) That the Court expressly waives the stay requirements imposed by F. R. Bankr. P. 4001(a)(3) and the order be effective upon entry; and
- h) For such other and further relief as the Court deems just and proper.

U.S. Bank, N.A., successor trustee to
LaSalle Bank National Association, on
behalf of the holders of Bear Stearns
Asset Backed Securities I Trust 2006-
HE2, Asset-Backed Certificates Series
2006-HE2
By Counsel

MORRIS | HARDWICK | SCHNEIDER, PLLC

By: /s/ Angela N. Watson
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Attorney for Movant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing Motion and Notice of Motion was transmitted to all parties listed on the ECF system or mailed first-class, postage prepaid this 6th day of February, 2014 to:

Donnie Ray Dunn
PO Box 231
Free Union, VA 22940

Herbert L Beskin(82)
PO Box 2103
Charlottesville, VA
22902
Chapter 13 Trustee

Margaret K Garber
U S Trustee's Office
210 First Street, Suite 505
Roanoke, VA 24011

/s/ Angela N. Watson
Angela N. Watson